UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF FLORIDA MIAMI DIVISION

CASE NO. 09-20526-CIV-GOLD/MCALILEY

KLAUS	HOFN	IANN,	an i	ndiv	idual,
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Plaintiff.

V.

EMI RESORTS, INC., a foreign corporation, et al.,

Defendants.

FRED ELLIOTT AND DEREK ELLIOTT'S JOINDER IN THE CORPORATE DEFENDANTS' OBJECTION TO SPECIAL MASTER THOMAS E. SCOTT'S REPORT AND RECOMMENDATION FOLLOWING PRELIMINARY FORENSIC ANALYSIS [D.E. 883]

Fred Elliott and Derek Elliott hereby join in the Corporate Defendants' Objection to Special Master Thomas E. Scott's Report and Recommendation following Preliminary Forensic Analysis (the "Corporate Defendants' Objection") [D.E. 883] and adopt the arguments set forth therein and incorporate same as if fully set forth herein. (The aforementioned Report and Recommendation is herein referred to as the "Report".)

In addition to joining in the Corporate Defendant's Objection we also point out that the Special Master has completely prejudiced our defense in this case. We have been completely denied due process and our rights. The Special Master has violated the Order Appointing Monitor [DE 528] by taking actions in violation of the laws of the Dominican Republic. Upon information and belief (and without limitation), the seizure of condominium unit purchase deposit monies and of

Cofresi resort payroll monies, the shut-down of the Cofresi resort without proper advance notice

and the removal of records from the Dominican Republic were all in violation of Dominican law.

He has gone beyond the scope of his duties and beyond the scope of this litigation as more fully

set forth in the Corporate Defendants' Objection.

We are at a loss to understand this process and how in a civil action a judge can entertain a report

which makes such unsupported allegations without any judicial process and even before the

claimants have particularized their claims after over 10 months. This report must surely

prejudice any judge or court from even hearing the matter if this report has been entertained or

even read by such parties.

The "Listing of Documents and Materials Removed, and Chain of Evidence" (at pages 43 and 44

of the Report) raises very serious concerns. Upon information and belief, the actions described

were in violation of Dominican law. In addition, the chain of evidence surely establishes that any

information removed may have been contaminated. According to the Report, this confidential

information was in the control of the "Dominican Plaintiffs" law firm of Medina & Rizek in the

Dominican Republic for weeks. It must be assumed that these materials have been reviewed and

perhaps tampered with by that firm. This is a serious issue, as the Corporate Defendants have no

way of knowing, for example, if the files were scrubbed to remove incriminating references to

Catledge/Impact. We request that all such information be returned to the Corporate Defendants

immediately.

The Special Master States (at page 3 of the Report): "The investors' plight is tragic. The cause of

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that plight is criminal. The main responsibility for that plight lay at the doorstep of a significant number of individuals and entities. Secondary, but no less culpable, responsibility potentially lay at the doorstep of many others."

Had the Special Master supported the Juan Dolio business plan, the sales team of Re/Max and the lifting of the Plaintiffs' destructive Dominican judicial liens, it is likely there would be no such plight. We have lost our life's savings and our life's work as a result of this "tragedy", which has been greatly exacerbated by the actions/inactions of Catledge/Impact and the subsequent mismanagement of the Court appointed "Monitor." We have put over 20 years work and all of our resources into the success of the resorts only to see everything lost. It is now time to remove the Special Master and force the Plaintiffs to plead their case.

We cannot possibly begin to answer the numerous erroneous and unjustified statements made in the Report that are specific to us, but we wish to point out, without limitation and without admitting the validity of any of the Special Master's diatribe, the following:

1. At page 30 of his Report the Special Master states:

"Gambling Advances paid from CCW. While Derek did provide details of his gambling advances through WWIN/CCW, those details do not agree with information separately received by the manager."

This comment is disingenuous in the extreme. On September 16, 2009, Derek Elliott emailed to

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Kip Rabin and Robert Rightmyer a sworn declaration regarding total gambling losses, which was based on reports received from the casinos in question. A true and correct copy of the same is attached hereto as Exhibit "A". The sworn declaration indicated that net gambling losses from 2005 to 2007 were \$119,865. Against this, were "comps" of \$64,040, resulting in a net net figure of \$55,825. The "comps" were largely used for business entertainment purposes, including many meals and hotel services consumed by James Catledge himself and by other Impact associates. As for the losses, these included "play" by other Elliott Group personnel (other than Derek Elliott) and were in any event paid for by one of the Elliotts' management companies. Consequently, any such losses came directly out of the Elliotts' own pockets. It is unconscionable that the Special Master referred to this issue, in terms taken directly from the original Hofmann Complaint, without referring to the aforementioned information.

- 2. At page 24 of the Report, the Special Master refers to "[t]he Elliotts' sale of at least one of the three Villas at Cofresi without proper reporting and disclosure to the other co-owners of the Villa." We have no knowledge of this transaction, as no particulars were provided by the Special Master. The fact is that there was no separate "sale" of any of the villas. The villas were managed, maintained and renovated (at considerable cost) by EMI Sun Village Inc. ("EMISV"). They were acquired by EMISV from the "other co-owners" and were encumbered in support of the liabilities of EMISV. They suffered the same fate as all other EMISV assets, resulting from the preventable demise of the Cofresi resort.
- 3. At page 9 of the Report, the Special Master states that he has "received reports" and has seen "a Dominican newspaper article" reporting the sale of the Cofresi resort to Globalia for

approximately \$4.3 million. This is truly indicative of the indifferent effort (to put it kindly) that the Special Master, acting as "Monitor", brought to the "management" of the Cofresi resort. We were shocked and appalled that the Cofresi auction sale brought only \$4.3 million. Despite the critical importance of this sale and its implications for the interests of the EMISV investors, the Special Master failed to retain any counsel whatsoever to attend the Cofresi auction sale. In our view, this is indicative of manifest incompetence. The Special Master chose to rely upon Dominican newspaper articles as his methodology for monitoring the sale. In contrast, we arranged, on behalf of the EMISV investors, for new Dominican counsel to attend at the sale. The same counsel have appealed the sale, due to its apparent impropriety, and are moving to enjoin the would-be purchasers from making any use of the Cofresi property.

It should be stated that the Special Master, despite several requests from Fred Elliott to visit Sun Village Cofresi, never to our knowledge set foot on the property. He showed barely more interest with respect to Juan Dolio, where he stopped by for only approximately 10 minutes. In the meanwhile, we and our staff were working around the clock to save these projects.

4. The Special Master again rehashes the Trans-Stahl loan at pages 23 and 24 of the Report (and elsewhere), which he persists in referring to as a "personal loan to Derek Elliott". This is a completely false and unjustified allegation (perhaps more accurately described as a "smear"). We fully discussed the Trans-Stahl issue in our *pro se* filings at DE 730 and DE 775. The Trans-Stahl funds were required and used for Cofresi operations. Neither Derek Elliott nor Fred Elliott benefitted in any way from the use of these funds. The "Use of Funds" summary set out at page 24 of the Report is completely consistent with this. As we understand it, EMISV utilized CCW

Dominicana accounts for the purpose of making payments.

5. At page 24 of the Report, the Special Master refers to: "Inversiones Werden- false encumbrances to related or friendly party to attempt to get assets further out of the reach from [sic] the hands of creditors, including the investors (whose money was used to purchase the Elliotts' interests in various assets in the first place);"

This statement is completely false and made without any substantiation whatsoever. A total of \$2,500,000 was borrowed for Cofresi resort purposes from a lender or lending group introduced to us by Enrique De Marchena Kaluche. Initially, the lending group operated through a Dominican company known as "Opiskeli", which later changed to "Werden". We have no knowledge as to who comprised the lending group. However, the borrowed funds were used entirely for Cofresi resort purposes. When the Cofresi resort was (precipitously) closed by the Special Master, interest on this loan could no longer be paid or deferred and the Werden lending group foreclosed on all security. This occurred within days of the closure of Sun Village Cofresi.

6. At page 24 of the Report the Special Master refers to: "Independence Yacht- purchased with investor monies purportedly for the purpose of entertaining potential new investors, but primarily used for the Elliotts' (mostly Derek's) personal use;"

Again, this is a completely incorrect statement. The Independence Yacht was purchased by Sun Village Juan Dolio Inc. ("SVJD") for promotion purposes and, in fact, was extensively used for such purposes. (Again, the Special Master has taken the reference to the Independence Yacht

directly from the original Hofmann Complaint and has apparently failed to make any

independent review and inquiries.) SVJD attempted to sell the Yacht in May, 2009 for \$280,000,

which funds were to be utilized to make payments to the Juan Dolio banks. This quite likely

would have forestalled the Juan Dolio foreclosure. Unfortunately, Greg Clark, the former CFO of

the Elliott Group, controlled the company that had legal ownership, but not beneficial ownership,

of the Yacht and, in breach of a Declaration of Trust signed by Mr. Clark, attempted to

misappropriate the Yacht for his own purposes. The Yacht has been "frozen" ever since,

unfortunately deteriorating and diminishing in value.

We have been denied our due process rights and request that the Court: (1) disregard the Report;

(2) order the Special Master to provide us a detailed accounting of all funds received and

allocated since July 17, 2009, as well as of his accounts for fees and disbursements in connection

with this case; (3) order the release to the Corporate Defendants of funds collected on behalf of

the Corporate Defendants; (4) order the \$300,000 that he has taken from the Re/Max escrow

account be returned to its rightful depositors; and (5) post this Joinder on the Hofmann Plaintiffs'

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website.

Respectfully Submitted,

Derek Elliott

(on behalf of Fred and Derek Elliott)

EXHIBIT A

2009 12/16 18:38 FAX 9056902711

Sworn Declaration - Las Vegas Schedules A, B and C ntered on FLSD Docket 12/17/2009 Page 1 of 2

From:

Derek Elliott [derek@elliottcorporate.com]

Sent:

Wednesday, September 16, 2009 3:05 PM

To:

'Rightmyer Robert'; 'Kip Rabin'

Cc:

'Carlos Concepcion'; 'Nelson C. Bellido'; 'Scott Burr'

Subject:

FW: Sworn Declaration - Las Vegas - Schedules A, B and C

Attachments:

SCHEDULE C - WWIN 12345B.pdf; SCHEDULE A - PLAYER SUMMARY AND EMAIL BACKUP.pdf;

SCHEDULE B - CHECK US\$300,000.00.pdf; LV Declaration.pdf

Importance:

High

Kip, Bob,

Attached please find the Las Vegas declaration and schedules.

Best regards,

Derek

From: Marlyn Socorro [mailto:msocorro@sunvillageresorts.com]

Sent: Tuesday, September 15, 2009 4:35 PM

To: Derek Elliott

Subject: Sworn Declaration - Las Vegas - Schedules A, B and C

Importance: High

<>SCHEDULE C - WWIN 12345B.pdf>> <<SCHEDULE A - PLAYER SUMMARY AND EMAIL BACKUP.pdf>> <<SCHEDULE B - CHECK US\$300,000.00.pdf>>

Dear Derek

Please find attached the schedules A, B and C for your Sworn declaration re. Las Vegas

Regurds,

Marlyn C. Socorro O.

Corporate Legal & Finance Manager

- t. 809.970.3364 x 35069
- f. 809.970.7219
- e. msocorro@sunvillageresorts.com
- w.sunvillageresorts.com

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF FLORIDA

CASE NO.: 09-20526-CIV-GOLD/MCALILEY

KLAUS HOFMANN, an individual	KL	AUS	HOFN	IANN.	an	individual
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Plaintiff,

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EMI RESORTS, INC., et al.,

Defendants.

DECLARATION OF DEREK FREDERICK CHARLES ELLIOTT

- I, Derek Elliott, of lawful age, and pursuant to 28 U.S.C. Section §1746, declare as follows:
 - 1. I make this declaration based on my own personal knowledge.
- 2. During the time period of 2003-2007, I visited the Harrah's Rio hotel in Las Vegas and Harrah's Lake Tahoe.
- 3. During my time there I used these hotels as a place to meet with business associates and business prospects.
- 4. In addition to meetings I also played casino games. All of the funds that I spent there were either personal funds or funds from EMI Resorts Inc. or EMI Resorts (S.V.G.) Inc., companies that are owned by my father or myself, and not the proceeds of any investor or purchaser.
- 5. Since receiving the request for this declaration from Kip Rabin on September 4, 2009, I have personally, as well as our Corporate Legal and Finance

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Manager, Marlyn Socorro, reviewed statements and contacted the Rio hotel on an almost daily basis by telephone and email in order to receive the necessary back up information to support the summary they provided to our legal counsel in March 2009. The persons we have been in contact with are Jesse Ferrell, International Host, as well as a representative from the Rio Hotel named Deborah Ferdinand.

- 6. To the best of my knowledge the attached supporting information (Schedule A) from the Rio is correct and represents the total net dollars that were spent at their properties between 2005 and 2007, which is a total of \$119,865.00. I also attach one supporting check (Schedule B) paid to my name, which appears to have been deposited to a construction account over which I had no control or authority. There were several other checks that I submitted for deposit to our Group CFO Gregory Clark, including one in the amount of approximately \$225,000. However, I have so far been unable to obtain support for this from these other checks from the Rio at this time.
- 7. Corresponding out bound transfers from 2003 to 2007 that include the years 2003 and 2004 are attached in (Schedule C). These amounts are included in (Schedule A), however, I have not been able to obtain the supporting inbound deposits of checks and or wire transfers that were provided or directed to our CFO for deposit that support the series of deposits made over those years. The Rio hotel has this information.
- 8. Since we have been unable to obtain the required supporting information from the Rio in response to our requests, I believe that they should be required to provide the information by subpoena in order to clear the false allegations relating to this matter.

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I DECLARE UNDER PENALTY OF PERJURY THAT THE FOREGOING IS TRUE AND CORRECT.

Date: September 15, 2009

DEREK FREDERICK CHARLES ELLIOTT

Marlyn Socorro

From:

Derek Elliott

Sent:

Saturday, September 05, 2009 10:55 AM

To:

Marlyn Socorro; Jenny De La Cruz

Subject:

FW: Harrah's Global Win/Loss Derek Elliott TR#1733387

Attachments:

Player Analysis.xis

From: Derek Elliott [mailto:derek@elliottcorporate.com]

Sent: Friday, September 04, 2009 5:09 PM To: 'Deborah Ferdinand'; 'Jesse Ferrell'

Subject: FW: Harrah's Global Win/Loss Derek Elliott TR#1733387

Hi Deborah,

Thank you so much for sending us this in March. Since then we are being audited. Is there any way that I can ask for detailed back up of every dollar I sent to you by check or wire and every check or wire that you sent to me?

This is critical for us.

Please let me know and also what I can do to assist.

Thanks,

Derek

From: Deborah Ferdinand [mallto:dferdinand2@harrahs.com]

Sent: Monday, March 09, 2009 12:36 PM

To: Jesse Ferrell

Cc: derek@elliottcorporate.com; Mark Spreitzer

Subject: RE: Harrah's Global Win/Loss Derek Elliott TR#1733387

Good Morning,

Attached is the summary you requested. I have three tabs, the first shows all play at the Tahoe property, the next is the play to the Las Vegas Region and the final is a summary by year for all play. Please let me know if you have any questions. Thanks,

Debbie

		Player	Summary	1				
			Year					
Guest Full Name	Prop	Data	2005	2006	2007	Grand Total		
ELLIOTT, DEREK	CLV	Total Actual		-		-		
		Total Theo		-		_		
		Total Comps		556		556		
	LAS	Total Actual	(4,705)	(20)	****	(4,725)		
	1	Total Theo	2,581	` 2		2,583		
	<u></u>	Total Comps	-	110		110		
	RLV	Total Actual	(91,900)	(296,310)	368,620	(19,590)		
	Ì	Total Theo	252,377	78,347	90,937	421,661		
		Total Comps	34,365	12,445	5,540	52,350		
	TAH	Total Actual		(95,550)		(95,550)		
		Total Theo		61,860		61,860		
		Total Comps		11,024		11,024		
Total Total Actual			(96,605)	(391,880)	368,620	(119,865)		
Total Total Theo			254,958	140,209	90,937	486,104		
Total Total Comps			34,365	24,135	5,540	64,040		

Guest ID	Guest Full Name	Prop	Start Date	End Date	Year	Theo	Actual	Comps
	ELLIOTT, DEREK	CLV	8/25/2006	8/25/2006	2006	-	-	136
	ELLIOTT, DEREK	CLV	9/7/2006	9/7/2006	2006	-	_	420
	ELLIOTT, DEREK	LAS	9/24/2005	9/24/2005	2005	2,581	(4,705)	
	ELLIOTT, DEREK	LAS	4/8/2006	4/8/2006	2006	•	-	55
	ELLIOTT, DEREK	LAS	4/18/2006	4/19/2006	2006	-	-	55
	ELLIOTT, DEREK	LAS	8/6/2006	8/6/2006	2006	2	(20)	
16700202851	ELLIOTT, DEREK	RLV	2/17/2005	2/18/2005	2005	17,756	12,700	1,429
16700202851	ELLIOTT, DEREK	RLV	3/5/2005	3/8/2005	2005	18,040	(73,000)	3,486
	ELLIOTT, DEREK	RLV	3/12/2005	3/17/2005	2005	59,025	99,900	5,998
	ELLIOTT, DEREK	RLV	3/22/2005	3/24/2005	2005		-	416
	ELLIOTT, DEREK	RLV	5/15/2005	5/19/2005	2005	32,792	25,200	5,297
	ELLIOTT, DEREK	RLV	6/3/2005	6/3/2005	2005	·_	-	270
	ELLIOTT, DEREK	RLV	7/23/2005	7/24/2005	2005	37,154	151,750	1,605
	ELLIOTT, DEREK	RLV	9/23/2005	9/25/2005	2005	55,151	(151,650)	2,820
	ELLIOTT, DEREK	RLV	10/11/2005	10/16/2005	2005	32,459	(156,800)	13,004
	ELLIOTT, DEREK	RLV	10/21/2005	10/21/2005	2005		-	40
	ELLIOTT, DEREK	RLV	3/11/2006	3/14/2006	2006	12,742	108,740	3,117
16700202851	ELLIOTT, DEREK	RLV	3/18/2006	3/20/2006	2006	38,983	(234, 175)	3,298
	ELLIOTT, DEREK	RLV	8/4/2006	8/9/2006	2006	7,208	(125,375)	4,446
	ELLIOTT, DEREK	RLV	8/10/2006	8/12/2006	2006	19,414	(45,500)	1,584
	ELLIOTT, DEREK	RLV	8/18/2007	8/19/2007	2007	5,662	86,710	599
	ELLIOTT, DEREK	RLV	8/21/2007	8/21/2007	2007	-	· <u>-</u>	84
	ELLIOTT, DEREK	RLV	10/13/2007	10/14/2007	2007	41,380	366,775	1,464
	ELLIOTT, DEREK	RLV	11/18/2007	11/18/2007	2007	· -	_	1,130
16700202851	ELLIOTT, DEREK	RLV	12/17/2007	12/18/2007	2007	43,895	(84,865)	2,263
	Total Las Vegas Pla	у				424,244	(24,315)	53,016

Guest ID	Guest Full Name	Prop	Start Date	End Date	Year	Theo	Actual	Comps
	ELLIOTT, DEREK	TAH	2/24/2006	2/27/2006	2006	61,860	(95,550)	10,750
	ELLIOTT, DEREK	TAH	2/28/2006	2/28/2006	2006	-	•	274
16700202851	ELLIOTT, DEREK	TAH	3/16/2006	3/16/2006	2006	-	-	-
	Total Tahoe Play					61,860	(95,550)	11,024

Registro movs. contabilidad

Emi Resorta (S.V.G) Inc.

Noviembre 3, 2007

Pág.

Registro movs. contabilidad: Nº asiento: 1152..1152

Fecha registro	T) N° do document	o Nº cuenta	Nombre	Descripción	Code Deparment	importe debe	Importe haber	Nº mov.
Nº esiento	1152							
10/19/07		2411140363	WWIN 12363		GEN	299,990,00		8407
Transfer fro	vm HSV Operado	ora de Holeles in	Boo, BPD Ref. Loan Mr. Den	k Elliott Rio Properties	nc Rio Suita Hotal and	casino		
10/19/07		2422140001	Other Account Payables		GEN		300,000,00	6408
A/P Mr. Der	rek Elliott Ref.Tr	ansfer from HSV	Operadora de Hoteles in Boo	BPD Ck. 10347 Rio Pr	operties inc Rio Suite i	lotel and casino	•	
10/19/07		2451400003	Bank Services Charges		GEN	10.00		6409
Bank Service	ces Charges A/F	Mr. Derek Elliol	it Ref,Transfer from HSV Oper	adora de Hoteles in filos	. BPD Ck. 10347 Rio P	roperties Inc Rio :	Suite Hotel and cas	MO
					Total	300,000.00	300,000.00	



ELLIOTT GROUP of Companies: LETTER OF REQUEST

Please perform the following transaction indicating my requests to be completed as soon as possible:

DEBIT ACCOUNT No.	CREDIT ACCOUNT - No.	MEMO	AMOUNT
12363	12344B	Transfer from 12363 to 12344B Ref: Money given by Mr. Derek to be deposited into SVG Account and Transfer to Construction. Ck 10347 Oct 19th, 2007 (\$300,000.00)	\$285,000.00
		Total	us\$285,000.00

Confirmation Request

O Email Confirmation

DISTRIBUTION LIST

I am fully aware that transaction fees indicated on WWIN's fee Schedule will apply and will be debited from the WWIN Member Account.

Provided below is the required information to authorize the above mentioned transaction;

Code Signature:

Jenny De La Cruz González

Date:

Oct 19th, 2007 ***To be posted***

Date Received	
Date Completed	
Authorized	

WWIN INTERNATIONAL LIMITED
(809) 970-3601 PHONE (809) 970-3602 FAX
wwin@wwinnsil.com

BANCO CTC Sf Twe 300,000 300000 Sutuc. SI Ine: Construel CKP SJ9

Registro movs, contabilidad

Noviembre 3, 2007

yrohttis

Registro movs. contabilidad; Nº asiento: 1153.,1153

regietro	do document	o Nº cuenta	Nombre	Descripción	Code Deparment	Importe debe	Importe haber	Nº mov.
Nº asiento	1153							
10/19/07		10811220002	EMI Sun Village Inc.		GEN	285,000.00		6410
Transfer fro	m 12363 to 123	44b Ref: Money :	given by Mr. Derek to b	e deposited into SVG Account a	ind Transfer to Const	uction		
10/19/07		10811140383	WWIN 12363		GEN		285,000.00	8411
Transfer fro	rn 12363 to 123	44b Ref: Money (given by Mr. Derek to b	e deposited into SVG Account a	and Transfer to Const	ruction		
					Total	285,000.00	265,000,00	

2009 12/16 18:41 FAX 9056902711 LYNN CARTER Case 1:09-cv-20526-ASG Document 884 Entered on FLSD Docket 12/17/2009 Page 2,1 of 22

Registro movs, contabilidad

cventura

Registro mova, contabilidad: Nº asiento: 1152..1152

registro	do docui	nento Nº ci	uenta Nombre	Descripción	Code Deparment	Importe debe	Importe haber	Nº mov.
Nº asiento	11	52						
10/19/07	•	241114	0363 WWIN 12363		GEN	299,990.00		6407
Transfer fro	om HSV Op	aradora de Ho	iteles in Boo. BPD Ref. Lo	an Mr. Derak Elliott Rio Propertie	s Inc Rio Suite Hotel and	casino		
10/19/07		242214			GEN		300,000,00	5408
A/P Mr. De	rek Elilott R	ef.Transfer in	m HSV Operadora de Ho	teles in 8co. BPD Ck, 10347 Rio I	Properties Inc Rio Sulte I	lotel and casino		
10/19/07	•	245140	0003 Bunk Services	Charges	GEN	10.00		6409
Bank Servi	ces Charge	S A/P Mr. Dere	ek Elliott Ref.Trænsfer fron	n HSV Operadora de Hoteles in B	co. BPD Ck. 10347 Rio f	Properties Inc Rio	Suite Hotel and cas	ino
					Total	300,000.00	300,000.00	

2009 12/16 18:41 FAX 9056902711 LYNN CARTER Case 1:09-cv-20526-ASG Document 884 Entered on FLSD Docket 12/17/2009 Page 22 of 22

Reld Oct 18,07 10:40 and Marsh Stephens L